

EXHIBIT D

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION
4 K.C. HOPPS, LTD.,
5 Plaintiff,
6 vs. Case No. 4:20-cv-00437-SRB
7 THE CINCINNATI INSURANCE
8 COMPANY, INC.,
9 Defendant.
10 AUDIO TRANSCRIPTION
11 30(b)(6) DEPOSITION OF TONY HENN
12 Taken on behalf of the Plaintiff
13 June 15, 2021
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1 Q Did you speak -- did you talk about
2 anything else other than the virus exclusion in
3 the state of Massachusetts?

4 A No.

5 Q And what did Mr. Huberty have to say
6 about the virus exclusion in the state of
7 Massachusetts?

8 A Well, he just filled me in on current
9 circumstances with the virus exclusion in the
10 state of Massachusetts.

11 Q And did he -- specifically why
12 Cincinnati includes a virus exclusion in policies
13 it writes on property in the state of
14 Massachusetts?

15 A Yes.

16 Q And what did he tell you is the reason
17 why Cincinnati includes virus exclusions in
18 commercial property policies it writes in the
19 state of Massachusetts?

20 A Well, this is a bit of a story. So
21 the state of Massachusetts was an inactive state.

22 Q Excuse me, was an active or an
23 inactive state?

24 A It was an inactive state for us. And
25 as an inactive state, we have ISO file on our

1 it fair to say?

2 MR. LITCHFIELD: Objection, form.

3 Q (By Mr. Shank) If you know.

4 A I don't know specifically when we were
5 active of it in the state, but it would have been
6 at least 2018 and possibly not until later.

7 Q Before Cincinnati -- excuse me.

8 Before Massachusetts became an active
9 state for Cincinnati, Cincinnati included a virus
10 exclusion in commercial property policies it
11 wrote for properties located in Massachusetts; is
12 that right?

13 A That would be correct.

14 Q And after Massachusetts became an
15 active state, Cincinnati continued to include the
16 virus exclusion in policies covering property
17 headquartered in Massachusetts; is that correct?

18 A Due to an analyst's mistake, yes.

19 Q Does Cincinnati still include a virus
20 exclusion in policies it writes for properties
21 located in Massachusetts?

22 A It does.

23 Q So to this day Cincinnati continues to
24 include a virus exclusion in policies covering
25 property located in Massachusetts?

1 supplementation that Cincinnati intends to make at
2 this time?

3 MR. LITCHFIELD: It is.

4 Q (By Mr. Shank) Mr. Henn, did you
5 review any other documents in preparation for
6 topic numbers 14 and 15 today besides this
7 Interrogatory response?

8 A No. Oh, I apologize. That's not
9 correct. I did look at the email -- well, that
10 would have been part of the Interrogatory, so
11 yeah, those two things, this document and that
12 email.

13 Q Right, okay, yeah. And I understand
14 what your -- what you mean, and we'll look at that
15 email here, here shortly.

16 So, so just to be clear, so in preparation
17 for topic numbers 14 and 15 having to do with
18 Cincinnati's consideration of the 2006 ISO virus
19 exclusion or any other virus exclusion, you
20 reviewed this supplemental Interrogatory response
21 and a September 22nd, 2006, email, and that's it?

22 A That's correct.

23 Q So let's look at this Interrogatory.
24 So Supplemental Interrogatory No. 6, State whether
25 you considered, evaluated or investigated whether

1 to alter, amend, or otherwise change the language
2 of the policy to include an exclusion of, or other
3 limitation to, coverage for losses related to
4 viruses or pandemics, whether by endorsement or
5 otherwise, at any time from 2006 through the
6 present.

7 Did I read that correctly?

8 A Yes.

9 Q And you understand that when it says
10 state whether you considered, you means Cincinnati
11 Insurance Company?

12 MR. LITCHFIELD: Objection, form.

13 A Yes.

14 Q (By Mr. Litchfield) So I want to
15 scroll down to the bottom here. Cincinnati, you
16 see where it says, this last paragraph,
17 Cincinnati identifies the following as higher
18 level employees who may have knowledge about the
19 foregoing matters. And then there are five
20 bullet points.

21 Do you see that?

22 A Yes.

23 Q And there are five names?

24 A Yes.

25 Q And we've already talked about the

1 first two. You testified earlier that you spoke
2 with Tim Schmittou as well as Tom Huberty in
3 preparation for your deposition today, right?

4 A Correct.

5 Q The bullet point, David Groff,
6 director of commercial lines product.

7 Do you see that?

8 A I do.

9 Q Do you know Mr. Groff?

10 A I do.

11 Q Did you speak with him in preparation
12 for your deposition today?

13 A I did not.

14 Q The fourth bullet point, Sean Givler,
15 commercial lines administration, do you see that?

16 A I do.

17 Q Do you know Mr. Givler?

18 A I do.

19 Q And did you speak with Mr. Givler in
20 preparation for your deposition today?

21 A I did not.

22 Q The fifth bullet point, Steve Spray,
23 chief insurance officer, hyphen, property casualty
24 insurance, did you speak with Mr. Spray -- or
25 excuse me.

1 First of all, do you know Mr. Spray?

2 A I do.

3 Q And did you speak with Mr. Spray in
4 preparation for your deposition today?

5 A I did not.

6 Q So I think we've covered who you've
7 spoken -- who you spoke to and what documents
8 reviewed -- you reviewed from preparation for
9 topic -- topics numbers 14 and 15. One final
10 question on this.

11 Other than the review of the two documents
12 that you identify and the discussions with
13 Mr. Schmittou and Mr. Huberty, did you do
14 anything else in preparation for your testimony
15 on behalf of Cincinnati today in connection with
16 topics 14 and 15?

17 A I did not.

18 Q Why don't we take a quick break.
19 We've gone about 45 minutes, and we're about to
20 get into a new topic. So let's go off the record
21 if that's all right.

22 MR. LITCHFIELD: Okay.

23 THE WITNESS: Dan, you're on mute.

24 MR. LITCHFIELD: Working mistake.

25 How long a break are you looking at so I can be

1 Do you see that?

2 A I do.

3 Q And Cincinnati states that, Subject to
4 its objections, Cincinnati states that it has
5 considered or evaluated whether to generally add
6 the 2006 ISO virus exclusion to its commercial
7 property policies.

8 Did I read that correctly?

9 A Yes.

10 Q And there are three subparagraphs.
11 Subparagraph A says this happened in 2006.
12 Subparagraph B, A consideration or evaluation was
13 made by Tim Schmittou, commercial lines product
14 director.

15 And then subparagraph C, This
16 consideration or evaluation is reflected in a
17 September 22nd, 2006, email from Mr. Schmittou,
18 which is being produced with this supplemental
19 answer.

20 Did I read all of that correctly?

21 A Yes.

22 Q So let's walk through this. So
23 Cincinnati states that it considered or evaluated
24 whether to add the virus exclusion, the ISO virus
25 exclusion, in 2006, right?

1 A Correct.

2 Q Did Cincinnati consider or evaluate
3 whether to add any other virus exclusion to its
4 commercial property policies at any time?

5 A I believe the supplemental answer is
6 our official position. It's our answer.

7 Q I guess I'm just asking you. Other
8 than the ISO virus exclusion, the 2006 ISO virus
9 exclusion --

10 A Okay.

11 Q -- did Cincinnati consider or evaluate
12 whether to add any other type of virus exclusion
13 to its commercial property policies?

14 A Not to my knowledge.

15 Q Did Cincinnati consider or evaluate
16 whether to add a 2006 ISO virus exclusion at any
17 time other than in 2006?

18 A Not to my knowledge.

19 Q Has Cincinnati considered or evaluated
20 whether to add the ISO virus exclusion since the
21 onset of the COVID-19 pandemic?

22 A Not to my knowledge.

23 Q And what have you done to investigate
24 whether Cincinnati has considered or evaluated
25 whether to add an ISO virus exclusion to its

1 commercial property policies after the onset of
2 the COVID-19 pandemic?

3 A I have not done any additional
4 investigation.

5 Q I guess what are you basing your email
6 that Cincinnati has not considered or evaluated
7 whether to add the 2006 virus exclusion to its
8 policies after the onset of the COVID-19 pandemic?
9 What are you basing that statement on?

10 A We don't consider virus to be a
11 covered cause of loss, so there's really no need
12 to add an exclusion.

13 Q Have you talked to anyone who told you
14 that Cincinnati has not evaluated whether to add a
15 virus exclusion to its policies post-COVID-19?

16 A I would say same answer. We don't
17 believe virus exclusion is necessary because the
18 virus is not a covered cause of loss.

19 Q So no one at Cincinnati has sent an
20 email after the onset of the COVID-19 pandemic
21 saying, hey, do we need to take another look at
22 whether we need to add a virus exclusion?

23 A Not to my knowledge.

24 Q Are you aware that other property
25 insurance companies have added virus exclusions to

1 **their policies after the onset of the COVID-19**
2 **pandemic?**

3 A I'm aware other carriers had
4 exclusions. As to when they decided or started to
5 do so, I don't know.

6 Q **Sorry, could you, could you repeat**
7 **that? You broke up on me there.**

8 A Okay. I'm aware that other carriers
9 do use virus exclusions. As to when they started
10 doing so, I don't know.

11 Q **Okay. So you're not aware that other**
12 **property insurance companies have added virus**
13 **exclusions since the onset of the COVID-19**
14 **pandemic?**

15 MR. LITCHFIELD: Objection, form.

16 Q **(By Mr. Shank) That's not something**
17 **you're aware of one way or the other?**

18 A Not specifically, no.

19 Q **Has anyone on Cincinnati's behalf**
20 **evaluated whether to add a 2006 ISO virus**
21 **exclusion to its commercial property policies at**
22 **any time?**

23 MR. LITCHFIELD: And Mr. Henn, you
24 can answer, but I'd admonish you, don't refer to
25 any discussions you're aware of involving counsel.

1 A Could you, could you restate the
2 question? I'm not sure I'm following it.

3 Q **(By Mr. Shank) Sure. So I just want,**
4 **I guess, just to explain. I'm curious if any --**
5 **anybody on Cincinnati's behalf, so any**
6 **non-Cincinnati employee, but some other person**
7 **that Cincinnati has retained, has any such person**
8 **evaluated or considered whether to add a virus**
9 **exclusion to its commercial property policies at**
10 **any time?**

11 A I'm not aware of that, no.

12 Q **Has Cincinnati retained any attorney,**
13 **whether in-house counsel or outside counsel, to**
14 **assess whether to add a virus exclusion to**
15 **commercial property policies at any time?**

16 MR. LITCHFIELD: Objection, and
17 I'll instruct you not to answer that.

18 Q **(By Mr. Shank) Are you going to**
19 **follow your counsel's advice, Mr. Henn?**

20 A I am.

21 MR. LITCHFIELD: I will permit one
22 question, though, counsel if it's helpful, which
23 is whether he has any knowledge about such a
24 retention.

25 A I do not.

1 Q (By Mr. Shank) So you do not -- you
2 do not know whether Cincinnati has retained
3 attorneys to evaluate whether to add a virus
4 exclusion to Cincinnati's commercial property
5 policies?

6 A Correct.

7 Q Did you conduct any investigation in
8 preparation for your deposition today to determine
9 whether Cincinnati has at any time retained an
10 attorney or attorneys to investigate whether to
11 add a virus exclusion to Cincinnati's commercial
12 property policy?

13 A First can you restate that? I just --
14 you're fading in and out on my sound.

15 Q Sorry. I'll try to speak more
16 clearly.

17 So did you undertake any investigation in
18 preparation for your deposition today to
19 determine whether Cincinnati hired attorneys at
20 any time to evaluate whether to add a virus
21 exclusion to Cincinnati's commercial property
22 policies?

23 A No.

24 Q Why not?

25 A I didn't think it was relevant.

1 A ISO.

2 MR. LITCHFIELD: Object to form.

3 A ISO. They're -- they are an
4 aggregator, I guess would be my explanation of
5 what they are, aggregator of data.

6 Q (By Mr. Shank) They're an aggregator
7 of data. What does that mean?

8 A Amongst other things.

9 Q Okay. So what other things?

10 A Well, obviously they do -- they also
11 do forms. They act as an advisory on forms.

12 Q When you say they're an aggregator,
13 what do you mean by that?

14 A Well, what I mean is insurance
15 companies that work with ISO will provide them
16 with, with data. ISO takes that for all insurance
17 companies that they work with, and they promulgate
18 loss costs and such things.

19 Q So is it the correct terminology to
20 say that Cincinnati Insurance Company is a member
21 of ISO?

22 MR. LITCHFIELD: Objection, form.

23 A We do have a contract with ISO.

24 Q (By Mr. Shank) So does, does
25 Cincinnati pay money to ISO to take advantage of

1 **its services?**

2 A Yes.

3 **Q Does Cincinnati have any**
4 **representative on any boards or groups in ISO?**

5 MR. LITCHFIELD: Objection, form.

6 A I know from my time in product
7 management group that we -- we do have some folks
8 that participate or did participate on some of
9 their boards, some of their coverage, you know,
10 groups I guess. I don't know what they call them
11 actually.

12 **Q (By Mr. Shank) And what do those**
13 **folks do generally speaking on those ISO boards?**

14 MR. LITCHFIELD: Objection, form.

15 A They're generally, they're just in the
16 capacity, at least our folks, in the capacity just
17 to hear out what is going on in the industry,
18 what, you know, what kind of things are coming
19 down the pipe, so to speak.

20 **Q (By Mr. Shank) And so would you,**
21 **would you expect a Cincinnati employee who's on**
22 **an ISO board to relay what's going on at ISO back**
23 **to the company?**

24 MR. LITCHFIELD: Objection, form.

25 A Not necessarily.

1 Q **(By Mr. Shank) Why not?**

2 A It just depends if it's something
3 that, that they feel is relevant to our operation.

4 Q **Right. So if they came across**
5 **something in their capacity with ISO that that**
6 **individual believed might be significant to**
7 **Cincinnati, Cincinnati would expect that person to**
8 **convey that to the company?**

9 MR. LITCHFIELD: Objection, form.

10 A Yes.

11 Q **(By Mr. Shank) Are you familiar with**
12 **a former Cincinnati Insurance Company employee**
13 **named Tad Bunnell?**

14 A I do, yes. I do remember Tad.

15 Q **Who is Mr. Bunnell?**

16 A He used to work in our research and
17 development department, which is no longer in
18 existence.

19 Q **What did the research and development**
20 **department do while it was in existence?**

21 A They researched and developed new
22 coverages, new, new forms, et cetera.

23 Q **Are you aware that Mr. Bunnell was**
24 **part of ISO's commercial property coverage group**
25 **in --**

1 MR. LITCHFIELD: Objection, form.

2 A I do remember that he was part of that
3 back, back in the day.

4 Q (By Mr. Shank) Let me -- I don't
5 think I got my question out.

6 Are you aware that Mr. Bunnell was a
7 member of ISO's commercial property group in 2006
8 when ISO was considering the virus exclusion?

9 MR. LITCHFIELD: Objection, form.

10 A Yes.

11 Q (By Mr. Shank) Did Mr. Bunnell
12 discuss with Cincinnati what ISO -- ISO's
13 conclusions were and recommendations were with
14 respect to the virus exclusion?

15 MR. LITCHFIELD: Objection, form.

16 A Cincinnati Insurance Company has no
17 knowledge of that, no.

18 Q (By Mr. Shank) Have you undertaken to
19 investigate what Mr. Bunnell may have conveyed to
20 Cincinnati about the ISO virus exclusion?

21 MR. LITCHFIELD: Objection, form.

22 A No.

23 Q (By Mr. Shank) Why not?

24 A Because I assumed it was part of the
25 larger search for anything related to the virus,

1 which produced the email that we were talking
2 about earlier.

3 **Q Does Cincinnati possess any**
4 **information about what Mr. Bunnell may have**
5 **relayed to Cincinnati about ISO's view of the**
6 **virus exclusion?**

7 A No.

8 **Q Was Mr. Bunnell involved in**
9 **Cincinnati's decision about whether to add the ISO**
10 **virus exclusion to its policies?**

11 A No.

12 **Q Why not?**

13 A That wasn't his job responsibility.

14 **Q So whether or not to add new policy**
15 **forms like the then new ISO virus exclusion was**
16 **not within the purview of the R&D department?**

17 A No.

18 **Q That was the sole responsibility Mr.**
19 **Schmittou?**

20 A Okay, would you clarify? Are you
21 asking -- well, what exactly are you asking?

22 **Q Well, you just testified that it was**
23 **not the R&D development -- it was not the R&D**
24 **development department's responsibility to assess**
25 **whether to add a new exclusion like the virus**